

SENATE BILL 1767

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 56; Title 57 and Title 67, Chapter 4, Part 10. This act makes appropriations for the purpose of providing health care programs to Tennesseans for an indefinite period of time.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new section to be designated as follows:

Section 67-4-1031.

(a) As used in this section, “nonparticipating manufacturer” has the same meaning as ascribed in § 67-4-2601(6).

(b)

(1) As used in this section, “cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to

be offered to, or purchased by, consumers as a cigarette described in subdivision (b)(1)(i);

(2) "Cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For the purposes of this subsection (b), " 0.09 ounces of "roll-your-own" tobacco constitutes one (1) individual "cigarette."

(c) Every nonparticipating manufacturer shall pay to the department for exclusive state purposes an equity assessment, in addition to all other assessments, fees, or taxes, upon each package of nonparticipating manufacturer cigarettes. The rate of the equity assessment shall be twenty five (25) mills on each cigarette. The department shall collect the equity assessment each month directly from the nonparticipating manufacturer based on information received by the department under subsections (e) and (f). Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax imposed by § 67-4-1002.

(d) The purposes of this equity assessment are:

(1) To prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering their cigarettes for sale substantially below the price of cigarettes of other manufacturers;

(2) To protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs and services funded in whole or in part by payments to the state under the

master settlement agreement, as defined in § 47-31-102 and to recoup settlement payment revenue lost to the state as a result of nonparticipating-manufacturer cigarette sales;

(3) To fund enforcement and administration of title 47, chapter 31, and title 67, chapter 4, part 26, related nonparticipating-manufacturer legislation, and the equity assessment imposed by this section, including reasonable administrative costs incurred by persons subject to subsection (f) by reason of the requirements of that subsection; and

(4) To fund other such purposes as the general assembly may determine.

(e) A nonparticipating manufacturer whose cigarettes are being offered for sale in this state on the effective date of this section shall pay the equity assessment imposed by this section within thirty (30) days after the effective date of this section. If cigarettes of a nonparticipating manufacturer are not being offered for sale in this state on the effective date of this section, then the nonparticipating manufacturer, before its cigarettes may begin to be offered for sale in this state, shall prepay the equity assessment imposed by this section for the number of cigarettes of the nonparticipating manufacturer that the department reasonably projects will be sold in the first calendar month in which cigarettes of the nonparticipating manufacturer are sold in this state. The prepayment amount shall be determined by multiplying twenty-five (25) mills times the number of cigarettes that the department reasonably projects that the nonparticipating manufacturer will sell in this state in that first calendar month, or fifty-thousand dollars (\$50,000), whichever is more. The department may require a nonparticipating manufacturer to provide any information reasonably necessary

to determine the equity assessment payment amount and, in the case of prepayment, the commissioner shall establish procedures providing for reimbursement to nonparticipating manufacturers if actual sales are less than sales as projected by the department and for additional payment by nonparticipating manufacturers if actual sales are greater than sales as projected by the department.

(f) Persons authorized to affix stamps or stamp-alternatives shall file with the department a monthly report by the twentieth day of each month stating the number and denominations of stamps or stamp-alternatives affixed to individual packages of nonparticipating-manufacturer cigarettes, by manufacturer and brand family, sold by the person for each place of business in the preceding month. Persons failing to comply with this subsection shall be subject to the penalties specified in § 67-4-1016.

(g) A person shall not affix, or cause to be affixed, to any package of cigarettes of a nonparticipating manufacturer the stamp required under existing law after receiving notice from the commissioner, which the commissioner shall provide, that the nonparticipating manufacturer has not paid in full the equity assessment imposed by this section. A person that has affixed the stamp required under existing law to any package of cigarettes of a nonparticipating manufacturer in violation of this subsection (g) shall be subject to the penalties specified in § 67-4-1016 and, in addition, shall be subject to the penalties specified in § 67-4-1024 for possession of tobacco products to which the required stamp has not been affixed and upon which the applicable tobacco taxes have not been paid.

(h) Cigarettes of a nonparticipating manufacturer that has not paid the equity assessment imposed by this section shall be treated as cigarettes of a nonparticipating manufacturer that has not provided the certification required by § 67-4-2602(a), or any successor legislation, and shall be treated as tobacco products to which the required stamps has not been affixed and upon which the applicable tobacco taxes have not been paid.

SECTION 2. The revenues received pursuant to this act are hereby appropriated for the purpose of funding statewide health programs as may be provided in the general appropriation act.

SECTION 3. If a court of competent jurisdiction issues a final order with a specific finding that a provision of this act causes the State of Tennessee to be in violation of the tobacco agreement known as the Master Settlement Agreement, the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999, codified in Title 47, Chapter 31, or the provisions of Title 67, Chapter 4, Part 26, all provisions of this act shall be null, void and unenforceable as of the date such opinion is issued.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring.